

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996:)
)
Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other)
Customer Information)
)

CC Docket No. 96-115

PETITION OF GTE FOR RECONSIDERATION

June 22, 1998

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SUMMARY

By this Petition, GTE seeks reconsideration of the Bureau's *Clarification Order* and requests further clarification of the Commission's *CPNI Order* to a very limited extent. Specifically, the *Clarification Order* has the unintended effect of prohibiting CMRS carriers from utilizing CPNI to market a bundled telecommunications service with a handset unless the carrier can establish that it previously provided bundled service and CPE to the customer. As a matter of statutory interpretation, this anomalous result is dictated neither by Section 222 of the 1996 Act nor the Commission's *CPNI Order*. Moreover, as a practical matter, because CMRS carriers – including GTE -- historically have not tracked when CPE is provided to customers as part of a bundled offering, the inability of CMRS carriers to prove that they have previously provided a particular customer with a handset bundled with his or her wireless service effectively eviscerates carriers' rights to utilize CPNI to market a bundled offering in the future.

There is simply no factual support for the *Clarification Order's* apparent conclusion that if a particular customer did not obtain a handset from his or her current provider, then the handset is outside of the carrier-customer relationship. To the contrary, in order to provide service, the carrier and the customer must make the handset an integral part of their relationship.

Because tracking CPE with a particular customer for CPNI purposes has never been required, few, if any, CMRS carriers have a reliable process in place to determine the origins of a particular customer's handset. Therefore, fundamental fairness requires that carriers be afforded the opportunity to implement tracking practices that have been historically unnecessary.

GTE urges the Bureau to further clarify that Section 222 and the *CPNI Order* permit CMRS carriers to use CPNI to market CPE as part of bundled packages while they are implementing tracking mechanisms to determine which customers are obtaining handsets with their telecommunications service.

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Information ("CPNI") and Other)	
Customer Information)	
)	

To: Chief, Common Carrier Bureau

PETITION OF GTE FOR RECONSIDERATION

GTE Service Corporation and its affiliated telecommunications companies (collectively "GTE"),¹ pursuant to Section 1.106 of the Commission's rules,² submit this Petition for Reconsideration of the Bureau's *Clarification Order* in the above-captioned proceeding.³

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, GTE Wireless Incorporated, GTE Airfone Incorporated and GTE Hawaiian Tel International Incorporated.

² 47 C.F.R. § 1.106.

³ Order, DA 98-971 (released May 21, 1998) ("*Clarification Order*"), *clarifying* the Commission's Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (released February 26, 1998), 63 Fed. Reg. 20326 (published April 24, 1998) ("*CPNI Order*")

For the reasons set forth below, GTE requests reconsideration of the Bureau's clarification which has the unintended effect of prohibiting commercial mobile radio service ("CMRS") carriers from using customer proprietary network information ("CPNI") to market customer premises equipment ("CPE") bundled with telecommunications services *unless it can be established that the customer previously obtained the CPE from the same carrier offering the bundled package*. Because carriers have not necessarily tracked whether CMRS-related CPE was previously provided as part of a bundled package, GTE requests that the Bureau clarify that CMRS-related CPE obtained by the customer prior to the date of the *Clarification Order* falls outside of the *CPNI Order*'s restriction upon the use of CPNI to market CPE. Specifically, GTE requests that the Bureau further clarify that Section 222 and the *CPNI Order* permit CMRS carriers to use CPNI to market CPE as part of bundled packages until they have implemented functional tracking mechanisms to determine which customers are obtaining CMRS-related CPE with the telecommunications service.

I. INTRODUCTION

Section 222 of the Telecommunications Act of 1996⁴ permits carriers to use, disclose, or permit access to CPNI in the provision of telecommunications

⁴ The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996), *codified beginning at* 47 U.S.C. § 153 *et seq.* (the "1996 Act"). All references to the "Act" are to the Communications Act of 1934, as amended by the 1996 Act.

services and services necessary to, or used in, the provision of those telecommunications service.⁵ In the *CPNI Order*, the Commission found that even when bundled with CMRS, CMRS-related CPE does not constitute a telecommunications services⁶ nor is it “necessary to, or used in the provision of [a] telecommunication service,” such as CMRS.⁷ Based on this conclusion, the Commission prohibited CMRS providers from using CPNI to market CMRS-related CPE without prior customer approval.

In the *Clarification Order*, the Bureau clarified that when CMRS providers offer CMRS bundled with CPE, neither Section 222 nor the *CPNI Order* restricts the use of CPNI to market new or upgraded CPE if the carrier or its agents provided the existing CPE to the customer.⁸ The Bureau’s rationale for so clarifying the *CPNI Order* was two-fold. *First*, the Bureau found that information derived independently from the provision of CMRS, such as information about a customer’s CPE, is not CPNI.⁹ *Second*, the Bureau found that if a wireless carrier sold a customer a CMRS handset as part of a bundled service offering, the carrier would have access to information concerning the customer’s purchase of the CPE.¹⁰ Thus, the Bureau concluded that if the carrier was the provider of

⁵ 47 U.S.C. § 222(c)(1)(A)-(B).

⁶ *CPNI Order* at ¶ 47.

⁷ *Id.* at ¶¶ 71-72, ¶ 77.

⁸ *Clarification Order* at ¶¶ 6-7.

⁹ *Id.* at ¶ 4.

¹⁰ *Id.* at ¶ 5.

the existing CPE, the carrier could use CPNI without consent to market new CPE because the carrier would only be using information within the existing relationship and therefore consistent with Section 222(c)(1).¹¹

As detailed below, GTE requests reconsideration of the *Clarification Order* both as a matter of proper statutory interpretation and because of its practical, albeit unintended, impact. Contrary to both Section 222 and the *CPNI Order*, there is no support for the apparent conclusion that *only* handsets obtained from customers' present CMRS carriers are part of the existing carrier-customer relationship. To the contrary, it is statutorily irrelevant where a particular customer may have obtained the CPE necessary to utilize the carrier's service. Moreover, from a practical standpoint, few, if any, CMRS carriers have reliably tracked whether a particular customer obtained his or her CPE from that carrier or obtained it somewhere else. For these reasons, the Bureau should reconsider the *Clarification Order* to a very limited extent and find that, consistent with Section 222 and the *CPNI Order*, a customer's CMRS carrier may subsequently offer new CPE bundled with its service, irrespective of where existing handsets were obtained prior to the date of the *Clarification Order*. As to handsets obtained after the date of the *Clarification Order*, CMRS carriers should be expected to establish tracking mechanisms and only those handsets for which

¹¹ *Id.* at ¶ 6. Subsequent to the Bureau's *Clarification Order*, GTE filed a Petition for Temporary Forbearance or Stay and CTIA submitted a Request for Deferral and Clarification of the *CPNI Order*. GTE also filed a Petition for Forbearance, Reconsideration, and/or Clarification. Numerous other parties submitted petitions for reconsideration.

the carrier can establish were obtained as part of a bundled package would then provide the basis subsequently to market new CMRS-related CPE.

II. CMRS HANDSETS ARE PART OF THE EXISTING RELATIONSHIP BETWEEN CUSTOMERS AND CARRIERS, REGARDLESS OF THE PARTICULAR ORIGIN OF THE HANDSET.

There is no factual support for the *Clarification Order's* apparent conclusion that if a customer did not obtain a handset from his or her current CMRS provider, then the handset is outside the existing carrier-customer relationship. In reality, customers expect CMRS carriers to treat all compatible handsets as part of the provision of service. For this reason, it is the standard practice of the CMRS industry, including that of GTE, to support all compatible handsets without regard to whether a particular customer obtained a handset from his or her current CMRS provider or elsewhere.

In this regard, GTE provides operational support for all handsets within its network. Even where a particular customer obtains a handset from a source other than GTE, GTE can and will reprogram the handset so that it will function properly within GTE's network. GTE – and other CMRS carriers -- also routinely perform adjustments and reprogram handsets based on customer requirements. Because non-GTE provided CPE will not work within the network without these actions, GTE's CPE relationship with the customer is established when the customer asks GTE to reprogram his or her existing handset. But for the establishment of this relationship, through the reprogramming of the customer's CPE, the customer could not use GTE's CMRS service. Thus, as previously

recognized by the *Clarification Order*, CPE is an integral part of the CMRS service, apart from which no service can be provided to the customer.

From the customer's perspective, CMRS and the handset are part of the existing carrier-customer relationship. As handset and network technology continues to advance, customers will benefit from upgrades and conversions from analog to digital, all of which will be supported as part of the relationship between customers and their carriers. In other words, both today, and into the future, CMRS service and CMRS CPE will continue to be bundled together in order to provide the service that customers expect and require. The specific origin of a customer's CPE is thus immaterial, because the customer's handset is useless without the intervention of the customer's CMRS provider.

A CMRS carrier's CPE relationship with its customer, while established when the non-carrier provided CPE is reprogrammed, is also an ongoing relationship. For example, GTE provides the same repair services to all of its customers regardless of where they obtained their handsets. Specifically, whenever a customer brings a handset to a GTE service location, GTE will repair the handset whether the customer obtained it from GTE or not. As an authorized repair location for the manufacturer of the handset, GTE will perform service on handsets under warranty at no charge and even after the warranty period has expired (albeit for a fee). In short, GTE does not differentiate between CPE obtained from GTE and CPE obtained from other suppliers with respect to the services provided to its customers.

Finally, CMRS carriers treat customers the same from a customer care standpoint, irrespective of the origin of their handsets. For example, if a customer calls a GTE customer care center with trouble with a handset, GTE does not inquire whether the customer obtained the handset from GTE or elsewhere. As detailed below, in most cases GTE customer care representatives do not have access to reliable information on their computer screens about whether a particular customer obtained the handset from GTE. Thus, all customers calling GTE about handset issues are supported equally by GTE's technical help desk or referred to their nearest service location for the resolution of their difficulties.

III. THE CMRS INDUSTRY, INCLUDING GTE, HAS NOT TRACKED HISTORICALLY THE SALE OF CMRS HANDSETS.

GTE generally provides customer equipment as part of its CMRS package. This, however, has not always been, and still not always is, the case. Indeed, customers are increasingly coming to GTE with wireless CPE obtained either from another carrier or through some other outlet. Nonetheless, as long as customer equipment is compatible with GTE's network configuration, GTE reprograms the CPE and provides service to customers who have not obtained their CPE from GTE.

As set forth in the Declaration of Phil O'Brien, GTE does not currently have a reliable method in place to determine which customers have obtained handsets from GTE. In most markets, GTE's records do not reflect whether the customer obtained the handset from a source other than GTE or obtained the handset directly from GTE. Moreover, although GTE keeps detailed accounts of

its inventory, GTE does not routinely associate a reduction in inventory with a customer's record either in its billing systems or marketing databases.

For wireless handsets that GTE provides to customers, GTE's inventory control process permits GTE to manage the customer equipment needs of its wireless customers. GTE receives wireless equipment into inventory in central warehouses across the country. In these central warehouses, GTE scans into its accounts payable database purchase order numbers and sets up SKUs that identify products and map their locations in GTE's warehouses. This permits GTE to track inventory and sales balances.

GTE's retail stores select certain products from inventory and place orders for customer equipment. The order is entered into the inventory system and a "pick" is generated listing items by part number, quantity, and description that determines which warehouse will pack and ship the products to GTE's retail stores. At this point, the electronic serial number ("ESN") of each wireless handset is scanned into an automated system with an order number that is uploaded each day into the inventory system. GTE uses the paired ESN and order number to track the wireless handset from the warehouse to the retail store.

When GTE's retail stores receive wireless handsets, they enter the handsets into inventory by ESN. When sales representatives ring up a sale, they scan or enter manually the ESN into a point of sale system that relieves the item from inventory. This point of sale system, however, does not link directly to GTE's billing systems for the purposes of noting CPE sales. Only one of GTE's

legacy billing systems provides a field for noting whether a customer has purchased his or her CPE from GTE or somewhere else. In GTE's other billing system, the fact that a customer brings his or her own phone is noted only by a credit that the customer may receive on his or her bill for providing the phone. This information is in the billing system for only a short time until it is archived for up to a year.

Because whether a customer purchased his or her handset from GTE has never been of material importance in the past, GTE has not historically required its employees to ensure that notations with respect to CPE are reliable. Most importantly, GTE's only accurate record of the sale of wireless handsets, the point of sale system, does not feed CPE information either into GTE's activation systems or its marketing databases. Even for GTE's billing system that contains a field for CPE sales, GTE must rely on sales representatives' verbal or electronic entries into its activation system. To cross-check the point of sale system, where available, with GTE's marketing database information would be highly burdensome and quite likely to be inaccurate. Thus, GTE has no reliable mechanism through its billing systems or marketing databases to determine whether a customer has purchased a handset from GTE.

With respect to GTE's indirect sales channel, GTE has even less information as to whether a customer purchased CPE from GTE. Agents, for example, may or may not purchase CPE from GTE. GTE does not monitor what an agent does with CPE inventory that the agent purchases from GTE. Where relevant, the only notation that GTE makes in its billing systems with respect to

agent-provided handsets is that GTE did not provide the customer the handset directly, although GTE may have provided the agent with the handset indirectly. GTE therefore has no record of whether either GTE or the agent provided a customer with CPE through the indirect sales channel.

IV. THE BUREAU SHOULD RECONSIDER AND FURTHER CLARIFY THAT THE ORIGIN OF A PARTICULAR CUSTOMER'S HANDSET IS IMMATERIAL FOR THE PURPOSES OF USE OF CPNI TO OFFER NEW BUNDLED CPMS SERVICE WITH CPE.

The obviously unintended, but practical implication of the *Clarification Order* is that if a CMRS carrier has not reliably tracked whether it has provided handsets to particular customers, the carrier must seek consent from all customers in order to market a bundled package that includes CPE. No rational basis exists for this unintended result, which essentially swallows whole the clarification that carriers may continue to offer bundled CMRS service with related CPE where they have provided such bundled packages in the past.

As demonstrated above, customers and carriers alike consider handsets -- without regard to their origin -- to be part of the existing relationship between the customer and carrier. For their part, customers expect carriers to provide service to all compatible CPE and to support CPE-related problems. And CMRS carriers do just that. Simply stated, unless the Bureau provides further clarification, customers will lose the ability to gain valuable information about products and services that are available to them. Indeed, customers routinely look to their current provider for information about recent handset technology developments.

This flow of information will be stifled unless the Bureau addresses this unintended result of the *Clarification Order*.

Because of this practical problem, the Bureau should further clarify that the origin of a particular customer's handset is immaterial for the purposes of future use of CPNI to offer bundled CMRS service with new CPE. Sound public policy –as well as proper statutory interpretation – supports this conclusion. Specifically, because customers expect that carriers will provide them with information about CPE regardless of whether they obtained their existing CPE from their present carrier, no customer privacy will be compromised by the future offering of bundled CMRS service with new CPE. Moreover, fundamental fairness requires that carriers be afforded the time necessary to implement tracking practices that have not historically been in place. By so reconsidering the *Clarification Order* and providing further clarification of the *CPNI Order*, carriers will have sufficient time to implement tracking mechanisms or other processes that will tie marketing databases to the sale of CPE on a going-forward basis.

V. CONCLUSION.

For the foregoing reasons, GTE requests reconsideration of the Bureau's apparent finding in the *Clarification Order* that CPE not obtained from a particular customer's current carrier is outside of the existing carrier-customer relationship. Specifically, GTE urges the Bureau to clarify further that Section 222 and the *CPNI Order* permit CMRS carriers to use CPNI without consent to market CPE as part of bundled packages while they are implementing functional

tracking mechanisms to determine which customers are obtaining CMRS-related CPE with the telecommunications service.

Dated: July 22, 1998

Respectfully submitted,

GTE Service Corporation and its
affiliated domestic telephone operating
companies

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